

Exhibit 13

1 RACHEL S. DOUGHTY (Cal. Bar No. 255904)
2 JESSICA TAYLOR (Cal. Bar No. 301708)
3 GREENFIRE LAW, PC
4 P.O. Box 8055
5 Berkeley, CA 94707
Telephone: 510-900-9502
Email: rdoughty@greenfirerlaw.com
jtaylor@greenfirerlaw.com

Attorneys for the Story of Stuff Project

**BEFORE THE STATE WATER RESOURCE CONTROL BOARD, OFFICE OF
ADMINISTRATIVE HEARINGS**

STATE OF CALIFORNIA

In the Matter of:

| VV: INV 8217

DRAFT CEASE AND DESIST ORDER
ISSUES AGAINST BLUETRITON
BRANDS, INC.

SUR-REBUTTAL TESTIMONY OF AMANDA FRYE

SOS 001

1 **Location of Arrowhead Springs**

2 1. In the Prosecution Team’s rebuttal testimony by Natalie Stork¹ and during other
3 times in this hearing, the Headwater Springs of Strawberry Creek have been inaccurately referred to
4 as Arrowhead Springs. This inaccurate and misleading statement invites a misunderstanding of
5 historical documents.

6 2. The Strawberry Creek Headwaters are located at Township 2 North Range 3 West
7 Sections 30 and 31 near the mountain top in the San Bernardino National Forest.² BlueTriton’s
8 present day spring water diversion sites are located in the Strawberry Creek Headwaters about three
9 miles away from Arrowhead Springs at the mountain base Township I North Range 4 West.³

10 3. The United States Geological Survey (“USGS”) map by W.C. Mendenhall and J.B.
11 Lippincott, “Hydrologic Map of San Bernardino, Redlands and Vicinity” (1905), Plate 12 in the
12 USGS “The hydrology of San Bernardino Valley, California Water Supply Paper 142” (1905)
13 (“1905 USGS Map”) clearly shows Arrowhead Springs near the mountain base and Strawberry
14 Creek and its headwaters near the mountain top.⁴

15 4. The 1915 Automobile Club of Southern California “Map of the Famous 101 Mile
16 Drive on the Rim of the World Showing Resorts, Lakes and Fishing Streams” shows Arrowhead
17 Springs at the mountain base near Waterman Canyon.⁵ This 1915 map features Strawberry Creek as
18 a fishing stream.

19 5. The USGS 1915 publication on Springs featured Arrowhead Springs which were
20 described at the base of the mountain below the landmark arrowhead.⁶

21 6. The United States Forest Service showed “Arrowhead Springs” in Township 1
22 North, Range 4 West, Sections 11 and 12 in its materials related to the Special Use Permit received
23

24 ¹ 2022-03-21, morning session, 1:00:24.

25 ² FR 10-12 (San Bernardino National Forest Atlas quadrangle maps); [Power Point_002](#).

26 ³ FR 13.

27 ⁴ FR 62; [Power Point_004](#).

28 ⁵ FR 75; [Power Point_007](#).

29 ⁶ FR 99 G.A. Waring 1915 “Springs of California” USGS Water Supply Paper 338.
https://pubs.er.usgs.gov/publication/wsp338; [Power Point_004](#).

1 by BTB predecessor Nestle Waters North America.⁷ The Strawberry Creek headwater springs are in
2 a completely different watershed from Arrowhead Springs Cold Water Creek/Canyon.⁸

3 **Maps and Stream Flow**

4 7. Testimony was given by Natalie Stork regarding the reliability of blue line and blue
5 dashed lines as indicators of the presence of streams in 1905.⁹ Mr. Nicholls testified that he does not
6 often rely on USGS topographic maps to determine where surface water exists, and that they are
7 unreliable for this purpose under some circumstances.¹⁰

8 8. I located “Instructions Relating to the Work of the United States Geological Survey
9 to Take Effect May 1, 1903.”¹¹ This manual describes USGS mapping/publication criteria,
10 including the following:

11 In drawing streams care should be taken that the lines shall not become faint and
12 uncertain near the sources of streams, and the placing of drainage in every little gully
13 simply to indicate that it may be a water course should be avoided. Use the symbol
14 dash and three dots for intermittent streams.¹²

15 9. Strawberry Creek is shown as a perennial stream on the 1905 USGS Map below
16 4400 feet elevation. This 4,400 ft. level appears to be at Rowe Station 84.¹³ Above 4,400 feet, the
17 multiple Strawberry Creek headwater springs contributing to the Strawberry Creek flow are shown
18 as an intermittent with a dash and three dot lines as prescribed in the USGS 1903 Survey
19 instructions guide.¹⁴ The combined streamflow of the headwater springs produced a perennial
20 stream by the time they joined the main flow at 4,400 feet elevation.¹⁵

21 7 SOS 084 (U.S. Forest Service Map, 2016).

22 8 [Power Point_006](#); SOS 084 (UFSF 2016 map re: Nestle SUP).

23 9 Beginning at 2022-03-21, morning session, 1:32:02.

24 10 2022-03-23, afternoon session, 2:36:32.

25 11 SOS 273; [Power Point_005](#).

26 12 SOS 273_073; [Power Point_005](#).

27 13 SOS 091 (Lippencott Topo Map (USGS) (1905), SOS 049 (Rowe Map of Strawberry Canyon); See also, [Power](#)
28 14 SOS 273_073.[Point_004-005](#).

15 SOS 091 (Lippencott Topo Map (USGS) (1905), 049 (Rowe Map of Strawberry Canyon), [Power Point_004](#); FR 62
29 (1905 USGS Map); FR 63 (W.C. Mendenhall, USGS “The Hydrology of San Bernardino Valley, California Water
Supply Paper 142.”).

1 10. The 1915 Automobile Club of Southern California “Map of the Famous 101 Mile
2 Drive on the Rim of the World Showing Resorts, Lakes and Fishing Streams” features Strawberry
3 Creek as a fishing stream. Strawberry Creek is drawn to the headwaters on this map below the
4 mountain top Rim of the World Drive. Arrowhead Springs is at the mountain base near Waterman
5 Canyon.¹⁶

6 | BTB Tenure in Strawberry Creek Watershed

7 11. Mark Nicholls claims that BlueTriton Brands Inc. (BTB or BlueTriton) and its
8 predecessors-in-interest have collected water within Strawberry Canyon for more than 120 years for
9 use in bottled water products.¹⁷ I have reviewed the historical record at length, and I do not find any
10 support for this statement. All historical documents point to an initial 1930 entry date to the
11 Strawberry Creek headwaters by BTB's predecessor in interest.

Before 1909

12. The San Bernardino Forest Reserve (now National Forest) was created February 25,
13
1893, which included the Strawberry Creek headwaters in T2N R3W.¹⁸ The purpose of the Forest
14 Reserve was to protect the watershed and timber supply.¹⁹ Neither BTB nor any of its predecessors
15 ever claimed land or water rights in T2N R3W at the current spring water diversion sites. Public
16 Notices in 1894 gave settlers 90 days to stake valid claims within the newly formed Forest
17 boundaries.²⁰

1909-1930

20 13. In May 1909, James Mumford and some business associates formed a company "to traffic in the mineral waters of the Arrowhead hot springs."²¹ The source water was to be piped

²³ ¹⁶ FR 75 (1915 Automobile Club of Southern California); Power Point_007.

¹⁷ BTB 6-004, ¶12 (Testimony of Mark Nicholls).

²⁴ ¹⁸ SOS 181(article from the Highland Citrus Belt, *Forest Reserve*); see also FR 32 (article from the San Francisco Call, *Save the Forests*); **Power Point 008**.

²⁶ ¹⁹ FR 33 (article from the Los Angeles Herald, *San Bernardino*, stating: "This reservation is made for the benefit of the adjoining communities, being created to maintain a permanent supply of water for irrigation and of wood for local use by a rational protection of the timber thereon."); **Power Point 008.**

²⁷ SOS 181 (article from the Highland Citrus Belt, *Forest Reserve*); FR 33 (article from the Los Angeles Herald, *San Bernardino*); **Power Point 008.**

21 Power Point 009.

1 “from the Coldlwater [sic] canyon into tanks and haul it thus in bulk to Los Angeles, where it will
2 be bottled and sold.”²² They contracted with the Hotel to build a pipe from a reservoir up-gradient
3 of the Arrowhead Hotel to the terminus of the electric car line at Arrowhead and in exchange, they
4 would be entitled to take water from the reservoir for 10 years.²³ The source of the water was “Cold
5 Creek.”²⁴ Mr. Mumford and his business associates assigned their contractual right to the water
6 from the Hotel reservoir to Arrowhead Springs Water Co.²⁵ The Cold Water Canyon water was
7 shipped to Los Angeles and sold by Arrowhead Springs Water Co., as well as “ginger ale, soda
8 water, and other similar products.”²⁶

9 14. Cold Water Canyon is in a different watershed and not downstream from Strawberry
10 Canyon.²⁷ The Cold Water Creek/Canyon water for bottling was obtained in Township 1 North
11 Range 4 West at the base of the mountain.²⁸

12 15. In 1910, Arrowhead Springs Water Company (LA bottlers) and Arrowhead Hot
13 Springs Company (the Arrowhead Hotel owners) got into a dispute (“**1910 Case**”).²⁹ Arrowhead
14 Hot Springs Company claimed that Arrowhead Springs Water Company was marketing bottled
15 water as sourced from Arrowhead Springs, attributing to the water it sold certain medicinal qualities
16 which it did not have because it was not sourced from the Arrowhead Springs at the base of
17 Arrowhead Mountain. There was then considerable testimony about where each party drew its
18 water. Testimony from multiple witnesses confirmed that the water that Arrowhead Springs Water
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20 22 FR 93_3 (San Bernardino Sun (May 8, 1909)); See also FR 93_2 (San Bernardino Sun (Aug. 25, 1909), FR 93_6 (san
21 Bernardino Sun (Aug. 25, 1909), *The Arrowhead Hot Springs Waters for World's Market*); **Power Point_009**.

22 23 FR 93_2 (San Bernardino Sun Aug. 25, 1909); **Power Point_009**.

23 24 *Id.*

25 25 FR 93_2, FR 93_7, FR 27_121 (1910 Case, Findings of Fact and Conclusions of Law).

26 26 FR 27_122, lines 13-15 (1910 Case, *Findings and Conclusions of Law*) (finding that all of the water delivered to
27 Arrowhead Springs Water Company was “water diverted and taken from the natural flow of the stream known as Cold
Creek”); **Power Point_010**.

28 27 **Power Point_002**; FR 10-12 (San Bernardino National Forest Atlas quadrangle maps).

29 28 FR 26 p. 1, 2 and 4 (*Arrowhead Hot Springs v. Arrowhead Cold Springs Co.* (San Bernardino County Superior Court,
Case No.12532), Complaint (June 17, 1912) describes where the real property of Arrowhead Hot Springs where the
water for bottling was obtained); see also, **Power Point_003**.

30 29 FR 27 (San Bernardino Superior Court Case in 1910, *Arrowhead Springs Water Co. v Arrowhead Hot Springs* SOS 005
(Case No. 11399) (“1910 Case”); see also **Power Point_010**.

1 Company used for bottling was taken from Coldwater Canyon at the base of Arrowhead Mountain.
2 Multiple witnesses including John Brown,³⁰ George Miller,³¹ Parley Heaps,³² K.C. Moores,³³ A.M.
3 Donald,³⁴ and S.F. Lee³⁵ all testified that the water sent to the bottling facility was obtained from
4 Cold Water Creek in Cold Water Canyon. Not a single witness testified that water came from
5 Strawberry Canyon.

6 16. Uninterested party and attorney **John Brown** testified in the 1910 Case that the
7 water for bottling was obtained from Cold Water Canyon principally from Arrowhead Mountain,
8 the crevices, the fissures and strata furnish water of Cold Water canyon. Mr. Brown furthered
9 testified that David Noble Smith drew water from Cold Water canyon. The West Fork of East Twin
10 Creek is called Cold Water Canyon Creek.³⁶

11 17. Multiple other witnesses corroborated other testimony that the water sent to the Los
12 Angeles bottling facility was the same water used by the hotel which was stored in a reservoir a
13 quarter mile north of the hotel sourced from Cold Water Creek from the “East side of Arrowhead
14 Mountain,” which forms the West side of Cold Water Canyon.³⁷

15 18. **George Miller**, testified in the 1910 Case that he knew David Noble Smith and
16 identified the source of Arrowhead Water for bottling as Cold Water Creek.³⁸

17 19. Other witnesses described the location of the water for bottling being sourced of
18 Cold Water Creek Canyon near the hotel. Witness **A. M. Donald** described a “large reservoir
19 situated about a quarter of a mile North of the Hotel” from which water was conveyed to be

30 Power Point 011.

31 Power Point 012.

32 FR 27.

33 Power Point 013.

34 Id

35 Id

³⁶ Power Point 11: EB 27 p. 34 (1910 Case)

³⁷ Power Point 012-013· FR 27

38 Power Point_012· ER 27

1 exported for bottling.³⁹

2 20. **S.F. Lee** testified that the water feeding the reservoir came from the Cold Creek
3 Canyon and corroborated the other testimony that this was the water sent to the Los Angeles
4 bottling facility.⁴⁰

5 21. **K.C Moores** testified that the cold water used in the hotel came from the same
6 reservoir as that used by the bottling works and that the source of this water was Cold Water
7 Canyon.⁴¹

8 22. Springs were described as coming out of rock on the East side of Arrowhead
9 Mountain in Cold Water Canyon.⁴² The Cold Water Canyon water was piped to a large reservoir
10 about a quarter mile North of the hotel where it was conveyed to be exported for bottling.⁴³

11 23. Contemporary sources corroborate the findings of the 1910 Case regarding the
12 source of water used for bottling. G.E. Bailey, a professor of geology at the University of Southern
13 California,⁴⁴ wrote a book in 1917 identifying “Aqua Fria. (Cold Canyon)” as “the water of Cold
14 Canyon, at the head of the pipe line leading to the man reservoir on the high mesa north of the hotel.
15 The elevation of the pipe head is about 2750 feet, or 750 feet higher than the hotel.”⁴⁵ He also noted
16 that “Fuente Frio” was a then un-tapped water source “located in the bottom of the Arrowhead
17 Canyon, about a quarter mile north of the hotel, at an elevation of 2260 feet. The overflow flows
18 down this canyon, passing Penyugal Spring, on its way to the valley.”⁴⁶ In another pamphlet, he
19 wrote that “Indian Springs (Aqua Frio) comes from a tunnel driven into the mountain side at an
20 elevation of 2750 feet, and just west of the arrowhead. The water is conducted to the Hotel and

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³⁹ Power Point_013; FR 27.

24 ⁴⁰ Id.

25 ⁴¹ Id.

26 ⁴² Power Point_011.

27 ⁴³ Power Point_009, _011-013.

28 ⁴⁴ See FR 41_1 (GE Bailey, *Arrowhead Hot Springs California's Ideal Spa*) and FR 154 (same); Power Point_015.

29 ⁴⁵ FR 43_028-029 (GE Bailey, *Arrowhead Hot Springs California's Ideal Resort*); Power Point_014.

30 ⁴⁶ Id.; see also, Power Point_20 (1929 Survey Map showing location of “Indian Springs Pipeline” and “Penyuga SOS 007
Spring”).

1 Bottling Works in a closed pipe without exposure to the air or any possible contamination.”⁴⁷

2 24. In 1915, Waring wrote in Water-Supply Paper 338 for the USGS that:

3 Water from a cool spring, Fuente Frio, situated about a quarter of a mile north of the
4 hotel, was placed on the local market as a table water during 1909. Agua Fria is the
5 water of Cold Canyon, at the head of the pipe line leading to the main reservoir on
the high mesa north of the hotel.⁴⁸

6 25. In 2018, the United States Forest prepared a report identifying the location of “Indian
7 Springs” located in Township 1 North Range 4 W Section 2. Satellite imagery shows Indian Springs
8 North and West of the landmark Arrowhead.⁴⁹ The report shows the Indian Springs tunnels (adits)
9 including an old pipe.⁵⁰ Indian Springs is not downstream or in the same watershed as Strawberry
Creek.

10 26. Byron Water’s letter to California Consolidated Water Co. February 14, 1929,
11 identified the location of “Indian Springs”⁵¹ which corroborates the location in the U.S. Forest
12 Service report⁵² and the 1929 survey.⁵³

14 1929

15 27. A former Arrowhead Springs employee known as “ETW” recorded his memories in
16 a 10-page document.⁵⁴ Consistent with contemporary reports, his later memory was that “One of the
17 early principal sources of cold spring water of high quality was the Indian Spring that is at the lower
tip of the Arrowhead.”⁵⁵

18 28. In 1930, the source of Arrowhead Springs water was changed. Local Historian
19 Richard D. Thompson corroborates ETW and other historical records that the source of water for

22 ⁴⁷ FR 41_2 (GE Bailey, *Arrowhead Hot Springs California's Ideal Spa*).

23 ⁴⁸ SOS 002_033 (Springs of California, by Gerald A Warning (1915)); see also SOS 274 (The December 1917 Report
XV of the State Mineralogist, which included identical text.); [Power Point_014](#).

24 ⁴⁹ [Power Point_016](#); SOS 111 (Correspondence between the Forest Service and SWRCB Staff re: Indian Springs Site
Visit Report).

25 ⁵⁰ [Power Point_017](#); SOS 111.

26 ⁵¹ FR 108 (Byron Waters letter to California Consolidated Waters, February 14, 1929); [Power Point_016](#).

27 ⁵² SOS 111(Correspondence between the Forest Service and SWRCB Staff re: Indian Springs Site Visit Report).

28 ⁵³ FR 44 (1929 San Bernardino County Map Book); [Power Point_021](#).

⁵⁴ SOS 276 (Development of Arrowhead Springs By ETW); [Power Point_018](#).

⁵⁵ SOS 276, p. 3.

1 bottling changed from Waterman Canyon to Strawberry Canyon headwaters in 1930.⁵⁶ The source
2 of supply for bottling purposes at the bottling plants had been to water lots in Waterman Canyon.⁵⁷
3 The construction of a number of homes in the Canyon resulted in a deterioration of the quality of
4 the water in this development and it was decided that a new source of supply should be sought. Mr.
5 H.B. Rock and Mr. A.J. Martins reviewed the possibility of locations that were available for new
6 development.⁵⁸ Mr. Martins found that there were natural springs in the head waters of Strawberry
7 Canyon at a elevation of approximately 5,300 feet and, after sufficient reconnaissance work had
8 been done and studies of the water made, it was decided that these should be developed as the new
9 source.⁵⁹

10 29. A.J. Tony Martins, Mr. Martins, or “Tony,” is mentioned in Rowe field notes.⁶⁰ The
11 referenced reconnaissance is consistent with the reporting in the Rowe Papers.⁶¹

12 30. ETW described the process by which the water of Strawberry Canyon were placed
13 into pipes in service of the water bottling operation. “It was found that the water was of excellent
14 quality and of sufficient quantity to supply the needs of the Company at that time and for many
15 years to come.” Spring No. 2 was placed in service in 1930 and was said to have “sufficient volume
16 so that it supplied all of the Company needs until several years later. In 1933, Spring No. 3 was
17 developed as an additional source to supplement the supply. In 1934, Spring No. 7 was developed
18 and added to the supply.⁶²

19 31. ETW describes that Springs 2, 3, and 7 were the sole source water for the Company
20 until the 1940s when Spring No. 1 was developed and added to the supply and redevelopment work
21

22 ⁵⁶ FR 152_003 (Richard D. Thompson, *This Way to Arrowhead Springs*; FR 152 is the same document as SOS 275, and
23 both are referenced herein and in the accompanying Power Point summary slides); [Power Point_018](#).

24 ⁵⁷ *Id.*

25 ⁵⁸ FR 152_003; SOS 276_005 (Development of Arrowhead Springs By ETW; SOS 276 is the same document as FR
26 153, and both are referenced herein and in the accompanying Power Point summary slides); [Power Point_018](#).

27 ⁵⁹ SOS 276_005; see also FR 152, FR 112 (1931 Agreement between Arrowhead Springs Corp. Ltd. And California
28 Consolidated Water Company).

29 ⁶⁰ FR 57_003 (Rowe Field Notes Notebook #762: July 3, 1930 Highway Spring to be divert (“Tony measured 5 gallons
in 60 seconds about 1 1/2 months ago.”).)

30 ⁶¹ FR 152; SOS 276; FR 57 (Rowe Field Notes Notebook #762); see also, [Power Point 19](#).

31 ⁶² SOS 276_5-6.

1 was done in two locations at Spring No. 7.⁶³ These later were called Springs 7A and 7B. Later,
2 Spring No. 8 was developed and added to the system. Springs No. 5 and No. 6 have not been
3 developed.⁶⁴

4 32. Again, ETW stated:

5 “It may have been noted that Spring No. 4 was not mentioned. This Spring was the
6 largest spring before development and gave promise of being the principal source
7 until development work at No. 2, which was being done at the same time as at No. 4,
8 resulted in the complete cessation of flow at Spring No. 4. All of the water came out
9 at No. 2.”⁶⁵

10 33. ETW recalled that “[t]he pipeline is a continuous welded line from the Springs to the
11 point where it was tied into the old Arrowhead Springs Corporation line from Strawberry Creek.
12 The old hotel company line is used from there to near the hotel company reservoir and a welded line
13 was installed from there to the Company loading reservoirs.”⁶⁶

14 34. Recorded agreements between Arrowhead Springs Corporation and California
15 Consolidated Water Company and Rowe field notes and communications align with local historical
16 personal accounts.⁶⁷

17 35. On February 27, 1929, Arrowhead Springs Corporation conveyed to California
18 Consolidated Water Company a right to use its infrastructure as well as a right to:

19 All subterranean waters in Waterman Canyon (also known as West Twin Creek) and
20 in Strawberry and Cold Water Canyons (also known as East Twin Creek), belonging
21 to the grantor, including all waters now being developed and produced by grantor in
22 said Canons, together with such additional subterranean waters now belonging to the
23 grantor as the grantees, its successors or assigns, may hereafter desire to develop,
24 together with necessary rights of way for pipe lines to convey such water to the
25 reservoir of the grantees, its successors, or assigns, and the right to go upon the
26 premises of the grantor and erect necessary tunnels and collection basins for the

27 ⁶³ Id.

28 ⁶⁴ Id.

29 ⁶⁵ Id. at 6.

30 ⁶⁶ Id. at 8. This “old hotel company line” is the one referenced in contracts between Arrowhead Springs Corporation and California Consolidated Water Company as well as in the Rowe Paper, constructed in 1929.

31 ⁶⁷ See FR 110 (1929 Agreement between California Consolidated Water Company and Arrowhead Springs Company) and FR 111 (Aug. 6, 1930, Agreement between Arrowhead Springs Corporation and California Consolidated Water Company); FR 57 (Rowe Field Notes) and FR 68 (Rowe Report Re: Transpiration Losses Along Strawberry Creek).
32 Power Point_021.

1 development of such water; excluding, however, all water of the grantor from
2 surface stream and hot springs.⁶⁸

3 36. The February 11, 1929, pipeline and easement survey for Arrowhead Springs
4 Corporation, which is referenced in the warranty deed from Arrowhead Springs Corporation to
5 California Consolidated Water Company,⁶⁹ only show pipes in Township 1 North Range 4 West, to
6 Waterman Canyon and Indian Springs. There was no pipeline in early 1929 that went to Strawberry
7 Canyon or anywhere else but Waterman Canyon and Indian Springs.⁷⁰

8 37. There followed another agreement, August 6, 1930, between Arrowhead Springs
9 Corporation and California Consolidated Water Company, as a result of “controversy [that had]
10 arisen between the parties hereto as to the character and amount of water to which Consolidated is
11 entitled under the terms of said contracts and said deed, and as to the character and amount of water
12 which Arrowhead has retained under said contracts and deed.”⁷¹ California Consolidated Water
13 Company agreed that it would construct and build a new pipeline linking to the springs located in
14 the upper Strawberry Canyon a pipe line of the Arrowhead Springs Corporation, constructed in
15 1929 (the “old hotel company line” mentioned by ETW).⁷² Additionally, California Consolidated
16 Water Company agreed to construct a new pipeline from the 1929 Arrowhead pipeline terminus:

17 100 feet north of the tunnel in Cold Water Canyon to a point ten (10) feet north of
18 the existing storage reservoir, having dimensions of 50 x 100', belonging to
19 Arrowhead, back of the existing hotel building of Arrowhead, and also that it will
construct a pipe line from the said reservoir to storage tanks and loading depot
owned and operated by Consolidated west of Hot Water Canyon.⁷³

20 38. In exchange, Arrowhead Springs Corporation granted to California Consolidated
21 Water Company:

22 (without any warranty whatsoever, except the warranty that Arrowhead has not
23 conveyed or transferred to any other person the same right, or any right, title or
interest therein) the sole and exclusive right to develop water from any and all

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25 ⁶⁸ FR 110_002 (Warranty Deed (Feb. 27, 1929)

26 ⁶⁹ Id.

27 ⁷⁰SOS 095 (E.T. Ham Survey); **Power Point_21**.

28 ⁷¹ FR 111 (1930 Agreement between Arrowhead Springs Corporation and California Consolidated Water Company).

⁷² Id., p. 2.

⁷³ Id.

1 sources whatever, whether surface, subterranean, seepage or otherwise, in
2 Strawberry Canyon, and whether within or without the real properties now owned by
3 Arrowhead.⁷⁴

4 39. The parties to the 1930 Agreement agreed to divide the water diverted from the
5 Strawberry Creek headwaters springs, which required determining which portion of the water
6 running through the 1929 pipeline could be attributed to water added in by the new pipeline built to
7 the headwater's springs. They agreed that:

8 The method of measurement of said water, so that both Consolidated and Arrowhead
9 shall receive their proper proportionate part thereof, shall be agreed upon by and
between an engineer designated by Arrowhead and an engineer designated by
10 Consolidated.⁷⁵

11 40. Also in the 1930 Agreement, California Consolidated Water Co. gave up any pre-
12 1914 water right to Indian Springs it may have previously obtained from Arrowhead Springs
13 Company, except any surplus:

14 Consolidated shall not be entitled to any water from Indian Springs and/or from the
tunnels located at and adjoining said springs, except such surplus of said water as
may exist after Arrowhead has made use of the same⁷⁶

15 41. Rowe, who had been retained to help with the defense in the Del Rosa Case
16 (discussed below), was now assisting in determining what portion of the water in Strawberry Creek
17 arriving at the 1929 Hotel Pipe was from the Strawberry Creek headwaters springs.⁷⁷

18 42. On July 12, 1930, Del Rosa Mutual Water Company filed a lawsuit against
19 Arrowhead Springs Corporation and California Consolidated Water Company, among others.⁷⁸ The
20 October 19, 1931, judgment in that case was that Arrowhead Springs Company did not have any
21 right to any water in East Twin Creek.⁷⁹ Del Rosa diverted its water from East Twin Creek below
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25 ⁷⁴ Id., p. 3.

26 ⁷⁵ Id.

27 ⁷⁶ FR 111, p. 4 (ninth condition).

28 ⁷⁷ See, generally, SOS 055 (Rowe correspondence).

⁷⁸ FR 45_16 (*Del Rosa Mutual Water Company v. D.J. Carpenter, et al.* (Case No. 31798) Judgment).

⁷⁹ Id., p. 17, lines 12-16.

1 the confluence of all of the tributaries to the East Twin Creek watershed.⁸⁰ The location of
2 California Consolidated Water Company's supposed diversion was vague: "California Consolidated
3 Water Company, now is and it and its predecessor in interest have been engaged in the business of
4 diverting water from East Twin Creek **and/or** its tributaries into reservoirs and tanks."⁸¹ But, as
5 recited in the 1929 Agreement between California Consolidated Water Company and Arrowhead
6 Springs Company,⁸² Consolidated's interest amounted only to what Arrowhead transferred to it in
7 1929 or 1930, and there was no history of Arrowhead Springs taking water from Strawberry
8 Canyon or East Twin Creek below the confluence of Cold Water and Strawberry Creeks prior to the
9 construction of the 1929 Hotel pipe that I have been able to find in the historical record.

10 43. The Del Rosa lawsuit included neither the State of California nor the landowner of
11 Strawberry Canyon, United States Forest Service (San Bernardino National Forest).

12 **Authentication of Exhibits**

13 44. On April 1, 2022, I located a document titled *Instructions Relating to the Work of*
14 *the United States Geological Survey, to Take Effect May 1, 1903*, by Charles D. Walcott (1903)
15 online at <https://pubs.usgs.gov/unnumbered/70159137/report.pdf> (last visited April 1, 2022). I
16 downloaded and saved a copy of this document, without alteration, to my computer. I offer into
17 evidence a true and correct copy of this document as **SOS 273**.

18 45. On March 28, 2022, I located the Report XV of the State Mineralogist, Mines and
19 Mineral Resources of Portions of California, Chapters of State Mineralogist's Report Biennial
20 Period 1915-1916, by Fletcher Hamilton on Google Books, available at
21 https://www.google.com/books/edition/California_Journal_of_Mines_and_Geology/PrszAQAAQAMAJ?hl=en&gbpv=1&dq=GE%20Bailey%20Arrowhead%20Springs&pg=PA886&printsec=frontcover&bsq=GE%20Bailey%20Arrowhead%20Springs (last visited March 28, 2022). I downloaded and
22 saved a copy of this document, without alteration, to my computer. I offer into evidence a true and
23 correct copy of excerpted pages 883 through 887 from this document as **SOS 274**.

26
27 ⁸⁰ Id., p. 19, lines 4-8.

28 ⁸¹ Id., p. 22, lines 17-20 (bold added).

29 ⁸² FR 110 (1929 Agreement between California Consolidated Water Company and Arrowhead Springs Company). SOS 013

1 46. On March 22, 2022, I visited the Arda Haenszel California Room located in the San
2 Bernardino Public Library, also known as the Norman F. Feldheym Public Library, at 55 W. 6th
3 Street in San Bernardino, California. There, I used my iPhone to photograph an excerpt from the
4 book *This Way to Arrowhead Springs*, by Richard D. Thompson (March 1976). I downloaded and
5 saved the photograph as a pdf file, without alteration, to my computer. I offer into evidence a true
6 and correct copy of excerpted page 22 from this document as **SOS 275**.

7 47. March 22, 2022, I visited the Arda Haenszel California Room located in the San
8 Bernardino Public Library, also known as the Norman F. Feldheym Public Library, at 55 W. 6th
9 Street in San Bernardino, California. There, I used my iPhone to photograph the ten page report
10 titled *Development of Springs by ETW* (Noted circa 1965, stamped by library June 18, 1978). I
11 downloaded and saved these photographs as a pdf file, without alteration, to my computer. I offer
12 into evidence a true and correct copy of this report from this document as SOS 276.

13 48. On July 27, 2017, I visited Water Resource Institute in San Bernardino, California.
14 There, I scanned excerpts from Volume IB Water Extractions From City Crk., Devil Canyon, Devil
15 Crk., L. Cajon, Lytle, Lytle Crk., Mill Crk., Oakl Glen, Plunge Crk., San Timoteo, Santa Ana,
16 Strawberry Crk., Waterman Cyn., & Yucaipa Ground Water Basins (1947-1973). I downloaded and
17 saved a copy of these excerpts, without alteration, to my computer. I offer into evidence a true and
18 correct copy of excerpted pages related to Strawberry Creek Basin and the Mountain Area
19 Summary by Owner from this document as **SOS 278**.

20 49. On September 22, 2015, I obtained copies of various United States Forest Service
21 notes from retired United States Forest Forester, Gary Earney. I downloaded and saved a copy of
22 this document, without alteration, to my computer. **SOS 279** is an excerpt of the documents I
23 received from Mr. Earney on September 22, 2015. I offer into evidence a true and correct copy of
24 this excerpt as **SOS 279**.

25 || 50. I declare the foregoing to be true and correct, this 8th day of April, 2022.

By: /s/ Amanda Frye
Amanda Frye